

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

MELVIN SHIELDS,

Defendant-Appellee.

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UNPUBLISHED

October 25, 2007

No. 273135

Wayne Circuit Court

LC No. 06-006231-01

Before: Bandstra, P.J., and Talbot and Fort Hood, JJ.

PER CURIAM.

The prosecutor appeals as of right from a circuit court order dismissing a charge of possession of less than 50 grams of cocaine with intent to deliver, MCL 333.7401(2)(a)(iv), following the grant of defendant's motion to suppress. We reverse and remand. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant was a passenger in a car stopped by police for having a dangling ornament hanging from the rearview mirror. See MCL 257.709(1)(c). The facts known to the officers created a reasonable suspicion that defendant might be armed and thus they could perform a patdown search for weapons. *People v Custer*, 465 Mich 319, 328; 630 NW2d 870 (2001). During that search, an officer felt a plastic bag containing a hard lumpy substance protruding from between the cheeks of defendant's buttocks (the gluteal cleft). When conducting the patdown search, the officer may seize any item that, by its feel, creates probable cause to believe that the item is contraband. *Id.* at 331; *People v Champion*, 452 Mich 92, 111-114; 549 NW2d 849 (1996). The officer reached into the back of defendant's pants, grabbed that portion of the bag protruding from the gluteal cleft, and pulled it out. "It was a plastic bag containing numerous individually wrapped plastic wraps containing suspected crack cocaine." The trial court suppressed the evidence on the ground that it was obtained as a result of an illegal body cavity search.

This Court reviews a trial court's factual findings at a suppression hearing for clear error, but reviews the ultimate ruling on a motion to suppress de novo. *People v Marcus Davis*, 250 Mich App 357, 362; 649 NW2d 94 (2002).

Statutory interpretation is a question of law that is reviewed de novo on appeal. *Van Reken v Darden, Neef & Heitsch*, 259 Mich App 454, 456; 674 NW2d 731 (2003). The rules of statutory construction require the courts to give effect to the Legislature's intent. This Court

should first look to the specific statutory language to determine the intent of the Legislature, which is presumed to intend the meaning that the statute plainly expresses. *Institute in Basic Life Principles, Inc v Watersmeet Twp (After Remand)*, 217 Mich App 7, 12; 551 NW2d 199 (1996). “If the statutory language is clear and unambiguous, judicial construction is neither required nor permitted, and courts must apply the statute as written.” *Rose Hill Ctr, Inc v Holly Twp*, 224 Mich App 28, 32; 568 NW2d 332 (1997). “Where a statute supplies its own glossary, courts may not import any other interpretation but must apply the meaning of the terms as expressly defined.” *People v Schultz*, 246 Mich App 695, 703; 635 NW2d 491 (2001). When terms are not expressly defined by statute, it is appropriate to consult dictionary definitions. *People v Denio*, 454 Mich 691, 699; 564 NW2d 13 (1997).

A body cavity search must be conducted by a physician, physician’s assistant, or nurse and, subject to three exceptions not relevant here, requires a warrant. MCL 764.25b(2), (3), (5). The statute defines a “body cavity search” as “a physical intrusion into a body cavity for the purpose of discovering any object concealed in a body cavity.” MCL 764.25b(1)(b). The term “body cavity” is defined as “the interior of the human body not visible by normal observation, being the stomach or rectal cavity of a person and the vagina of a female person.” MCL 764.25b(1)(a). The drugs were not removed from defendant’s stomach, and defendant did not have a vagina. Therefore, the search could only have been a “body cavity search” if it involved the “rectal cavity.” The word “rectal” means of or pertaining to the rectum, which is “the terminal section of the large intestine, ending in the anus.” *Random House Webster’s College Dictionary* (1997). Thus, the gluteal cleft, the area outside the anus, is plainly not the rectal cavity. Further, while the area is not visible by normal observation under certain circumstances, it is visible by normal observation by simply separating the cheeks of the buttocks. Therefore, the officer did not conduct a body cavity search when he grasped and pulled out the bag protruding from defendant’s gluteal cleft, and the trial court erred in suppressing the evidence.

Reversed and remanded for reinstatement of the charge. Jurisdiction is not retained.

/s/ Richard A. Bandstra

/s/ Michael J. Talbot

/s/ Karen M. Fort Hood